

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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ENNIS LEE BROWN,

Petitioner,

Case No. 16-cv-1497-pp

v.

BRIAN FOSTER,

Respondent.

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**ORDER DECLINING TO ISSUE CERTIFICATE OF APPEALABILITY**

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In May of 2019, this court dismissed the petitioner's petition for writ of *habeas corpus* because his petition contained both exhausted and unexhausted claims for relief. Dkt. No. 82. Six months later, the court denied his motion for reconsideration. Dkt. No. 91. The petitioner has filed an appeal of those orders Dkt. No. 92. But “[a] state prisoner whose petition for a writ of habeas corpus is denied by a federal district court does not enjoy an absolute right to appeal.” Buck v. Davis, —U.S.—, 137 S. Ct. 759, 773 (2017). He must first obtain a certificate of appealability. See 28 U.S.C. §2253(c)(1).

A court may issue a certificate of appealability only if the applicant makes a substantial showing of the denial of a constitutional right. See 28 U.S.C. §2253(c)(2). The standard for making a “substantial showing” is whether “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.”

Peterson v. Douma, 751 F.3d 524, 528 (7th Cir. 2014) (citing Slack v. McDaniel, 529 U.S. 473, 484 (2000)). The court declines to issue a certificate of appealability because no reasonable jurist could debate that the petitioner presented a “mixed” petition and no reasonable jurist could debate that the petitioner did not present grounds for reconsideration.

The court **DECLINES TO ISSUE** a certificate of appealability.

Dated in Milwaukee, Wisconsin this 6th day of January, 2020.

**BY THE COURT:**



**HON. PAMELA PEPPER**  
**Chief United States District Judge**